IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL REVISION APPLICATION NO. 22 OF 2002

Kamalakant Shablo Pilyenkar,
major, Agriculturist,
r/o Ambeshi Pale. ... Applicant.

versus

State of Goa
through Public Prosecutor,
Panaji-Goa. ... Respondent.

Mr. S. D. Lotlikar, Senior Advocate with Mrs. S. S. Samant, Advocate for the Applicant.

Mr. S. N. Sardessai, Public Prosecutor for the State.

CORAM : P. V. HARDAS, J.

DATED : 4TH APRIL, 2003.

**ORAL JUDGMENT**(PER P. V. HARDAS, J.)

The Applicant/Original Accused stands convicted for an offence punishable under Sections 354, 324 and 506(1) of the Indian Penal Code by the Assistant Sessions Judge, Panaji by Judgment dated 18th July, 1998, in Session Case No.7 of 1998 and confirmed by the learned lower appellate Court by Judgment dated 12th July, 2002, in Criminal Appeal No.38 of 1998. The Applicant/Original Accused has filed this present revision assailing the conviction and sentence.

2. The Applicant/Original Accused was sentenced to undergo Rigorous Imprisonment for one year and to pay fine of Rs.500/-, in default Rigorous Imprisonment for one month for an offence punishable under Section 354 of the Indian Penal Code. In respect of the offence punishable under Section 324 of the Indian Penal Code, the Applicant/Original Accused was sentenced to undergo Rigorous Imprisonment for six months and to pay fine of Rs.500/-, in default Rigorous Imprisonment for one month. In respect of an offence punishable under Section 506(1) of the Indian Penal Code, the Applicant/Original Accused was sentenced to suffer Rigorous Imprisonment for two months. The learned Assistant Sessions Judge, Panaji, directed that all the sentences shall run consecutively and an amount of Rs.1,500/- be paid as compensation to the prosecutrix. The Applicant/Original Accused being aggrieved by the conviction and sentence passed by the learned Assistant Sessions Judge, Panaji, in Session Case No.7 of 1998, by Judgment dated 18th July, 1998, filed an Appeal before the learned Sessions Judge, North Goa, at Panaji. The learned lower appellate Court by its Judgment dated 12th July, 2002, dismissed Criminal Appeal No.38 of 1998 filed by the Applicant/Original Accused. Hence, the present revision.

3. The facts as are necessary for the decision of the present Criminal Revision Application are set out hereunder:-

The pivot of the prosecution case is the testimony of P.W.3, Ujwala Verenkar, who was studying in VIIth class in the Navdurga High School. According to her, on 29th August, 1996, she started from her home at 6.40 a.m. for going to school. After having walked for about five minutes the Applicant/Original Accused came from behind and gagged her by putting a towel on her mouth. She states that the Applicant/Original Accused forcibly took her to the bushes and pushed her on the ground and scratched her with his finger nails on her neck, near her lip, on the index finger of her right hand and on the left forearm. According to her, the Applicant/Original Accused also gave tooth bite on her neck and on her thigh. According to her, after the Applicant/Original Accused had pushed her on the ground, the Applicant/Original Accused removed her clothes and threw her panty aside. She further states that the Applicant/Original Accused then sat on her stomach and started pressing her breasts and put his finger in her vagina. The Applicant/Original Accused thereafter got up, took his towel and chappals and while going threatened her by saying that P.W,3, Ujwala Verenkar, should go straight to school and in case, she told her mother about the

incident, the Applicant/Original Accused would kill her and bury her at the same spot. P.W.3, Ujwala Verenkar, then started walking towards her house and on the way she met her mother and narrated the facts to her. P.W.2, Metu Rama Verenkar, father of P.W.3, Ujwala Verenkar, lodged a complaint at Exh.PW2/8. During the course of investigation, the Police recorded the spot panchanama at Exh.PW1/6. The school bag of P.W.3, Ujwala Verenkar, and a mud stained panty was seized. The said panty is at M.O.2. During the course of investigation, in the presence of P.W.5, Arjun Pilyenkar, vide panchanama Exh.PW5/12 a towel M.O.8 was seized. In the presence of P.W.6, Ajay Mandrekar, the clothes of P.W.3, Ujwala Verenkar, were attached vide Exh.PW6/15. P.W.7, Dr. Indirani Pal, examined P.W.3, Ujwala Verenkar, to determine her blood group which was identified as B Rh positive vide Certificate at Exh.PW7/17. She had also examined the Applicant/Original Accused to determine his blood group which was determined as O Rh positive vide Certificate at Exh.PW7/18. P.W.3, Ujwala Verenkar, was examined by P.W.12, Dr. Silvano D. Sapeco who noticed the following injuries:-.

1. Both upper limbs have several nail scratch marks with soft red scars on-caused by blunt force or surface, probably human nails;

2. Left outer aspect of thigh has 9 x 4 x 1/4th area of grazed nail

scratch marks with soft red scars on-caused by blunt force or surface, probably human nails;

3. Left inner aspect of upper arm along axillary region has semi lunar patterned abrasional mark of 13 cms. circumference with an intervening bruise of 4 x 7 cms;

4. Right lower lip is swollen with depressed area of 1/8 cms. diameter.

5. Right middle finger is distal dorsal phalange has 2 soft scabbed puncture marks;

6. Neck front has bilateral soft scab nail imprint mark with grazed abrasion of 8 x 6 cms. on left outer aspect.

4. He opined that injuries 3, 4 and 5 were caused by blunt object most probably of human bite mark and injury no.6 was caused by blunt force probably human nails.

5. The examination report of P.W.3, Ujwala Verenkar, is at Exh.PW12/27. He had also examined the Applicant/Original Accused and he found the following injuries:-

1. Few soft scabbed scratches on chest front;

2. Right side of exposed lower lip has soft scar of 1/2 cm x 1/2 cm with red contusion of 1 cm diametre;

3. Patterned bite marks with soft scar marks each of 1/4th cm x

> scars on equidistant at 1/8th cm at outer aspect of left middle finger.

6. He opined that injury no.1 was caused by blunt surface and injuries no.2 and 3 could be of victims bite marks. After completion of the investigation, a charge-sheet against the Applicant/Original Accused under Sections 376 r/w 511 of the Indian Penal Code, 324 and 506(Part I) of the Indian Penal Code came to be filed.

7. The learned Assistant Sessions Judge, Panaji, acquitted the Accused for offences punishable under Section 376 of the Indian Penal Code but convicted and sentenced him as aforestated.

8. The learned lower appellate Court concurred with the findings of the learned Trial Court and dismissed the Appeal.

9. As stated earlier, the pivot of the prosecution case is the testimony of P.W.3, Ujwala Verenkar. The learned Trial Court in para 6 of the Judgment has observed thus:-

> "Besides contradictions have been brought out in the statement of the prosecutrix and which do not find any corroboration in the testimony of the doctor. There is improvement in the case as

made out by the prosecutrix and her mother Vandana(P.W.4)".

10. The learned Trial Court has further observed in para 8 in respect of P.W.3, Ujwala Verenkar, that "she was confronted with her statement before the Police where there was no whisper about this particular narration and which she could not at all account even after she was given opportunity to explain the omission. For that matter, these omissions were confirmed through the Investigation Officer and accordingly proved which goes to show that the prosecutrix has tried to improve on her statement in Court to implicate the Accused in an offence under Section 376 r/w 511 I.P.C. Another material omission is about the Accused gagging her with a towel in her mouth and which again she could not explain. For that matter, the witness also could not explain/account for the contradiction in her statement when she declined to admit having stated to the Police that the Accused had left her and run away when she shouted for help"(Emphasis supplied).

11. Both the Courts below have discarded the evidence of the prosecutrix in respect of her evidence that the Accused removed her clothes, sat on her stomach and pressed her breasts, put his finger in her vagina and gagged her with a towel. Both the Courts below, however, accepted that the Accused had removed her panty.

12. Mr. S. D. Lotlikar, learned Senior Counsel appearing on behalf of the Applicant/Original Accused has urged before me that the two Courts below have rejected a part of the testimony of P.W.3, Ujwala Verenkar, and the Courts below could not have accepted the statement of P.W.3, Ujwala Verenkar, that the Accused had removed her panty. He has also urged before me that the Courts below have themselves found that P.W.3, Ujwala Verenkar, was not a truthful witness. Therefore, according to the learned Counsel appearing on behalf of the Applicant/Original Accused, the evidence of P.W.3, Ujwala Verenkar, in respect of the offence punishable under Section 354 of the Indian Penal Code cannot be accepted without corroboration. Mr. Lotlikar, learned Senior Counsel appearing on behalf of the Applicant/Original Accused then submitted that in respect of an offence punishable under Section 506(1) of the Indian Penal Code there is only a bald assertion by P.W.3, Ujwala Verenkar. For the aforesaid reason, the statement in respect of the threats cannot be accepted without corroboration.

13. Mr. S. N. Sardessai, learned Public Prosecutor appearing on behalf of the State has urged that the finding of the panty at the scene of offence lends corroboration to the version of P.W.3, Ujwala Verenkar. He has urged before me that despite the fact that P.W.3, Ujwala Verenkar, tried to improve her case, she emerges as

a truthful witness on whose testimony reliance can be placed for convicting the Accused. He has further stated that the version of P.W.3, Ujwala Verenkar, is corroborated by her father P.W.2, Metu Rama Verenkar, and her mother P.W.4, Vandana Verenkar.

14. P.W.2, Metu Rama Verenkar, the father of P.W.3, Ujwala Verenkar, states that on the day of the incident, P.W.3, Ujwala Verenkar, had left the house to attend the school. After some time, P.W.3, Ujwala Verenkar, came back running to the house and she told that the Accused had misbehaved with her saying "look what Kamlakant has done to me". He states that the clothes of P.W.3, Ujwala Verenkar, were stained with mud and her face was covered with mud. He states "Ujwala was having her school bag". He then took Ujwala first to Navdurga High School and then to the Police Outpost at Usgao. He states that he then lodged his complaint at PW2/8. P.W.8, A. K. Shilkar, the Headmaster states that P.W.3, Ujwala Verenkar, was brought to school at about 9.00 a.m. by her father. He further states "I was told by the father of Ujwala while she was on her way to school she had been accosted by one person of the locality and in the scuffle, she had fallen down". P.W.4, Vandana Verenkar, mother of P.W.3, Ujwala Verenkar, speaks about what P.W.3, Ujwala Verenkar, has stated in her examination-in-chief. which both the Courts below have held as an improvement. She states that she

narrated about this incident to P.W.1, Chandrakant Pilyekar.

15. In the examination-in-chief, P.W.3, Ujwala Verenkar, did not identify M.Os 1, 2 and 3 i.e. the school bag, panty and her petticoat. In fact, she stated that these articles did not belong to her. It may usefully be mentioned here that the school bag, M.O.1 and the panty are alleged to have been seized at the scene of offence itself. Later on, P.W.3, Ujwala Verenkar, states that M.O.2 panty was worn by her on the day of the incident. P.W.1, Chandrakant Pilyekar, a panch witness to the scene of offence panchanama did not identify M.O.2 as the panty which was attached from the scene of offence under the panchanama at Exh.PW1/6. P.W.4, Vandana Verenkar, stated that the school bag shown to her was not of Ujwala. In fact, in her cross-examination, an omission is brought out regarding the panty lying at the scene of the incident.

16. Before the learned Trial Court, it was specifically urged on behalf of the Applicant/Original Accused, as is evident from para 6 of the Judgment of the Trial Court, that the panty had not at all been identified as belonging to P.W.3, Ujwala Verenkar. P.W.2, Metu Rama Verenkar, her own father states that when P.W.3, Ujwala Verenkar, had come home she had her school bag. Thus,

there is absolutely no corroboration in the form of the identification of the panty to the version of P.W.3, Ujwala Verenkar. The two Courts below have found that P.W.3, Ujwala Verenkar, had improved on her version in order to implicate the Applicant/Original Accused for an offence punishable under Section 376 of the Indian Penal Code. Both the Courts however, accepted P.W.3, Ujwala Verenkar's statement that the Applicant/Original Accused had removed her panty as there was no omission in this regard to her Police statement. Once the Courts had found that P.W.3, Ujwala Verenkar, was not a reliable witness, the Courts below could not have accepted that the Accused had intentionally removed the panty of P.W.3, Ujwala Verenkar, in order to outrage her modesty. I have already pointed out that the panty has not been identified by P.W.3, Ujwala Verenkar, as one belonging to her. As regards the evidence in this regard is far from satisfactory and in the absence of strong corroborative evidence according to me, the Courts below fell in error in accepting the uncorroborated version of P.W.3, Ujwala Verenkar, that the Accused had removed her panty with the intention to outrage her modesty. Thus, according to me, a charge for an offence punishable under Section 354 of the Indian Penal Code must fail.

17. In respect of the offence under Section 506(1) of the Indian Penal Code, the version of P.W.3, Ujwala

Verenkar, that the Accused had threatened her is not corroborated at all by P.W.4, Vandana Verenkar. P.W.4, Vandana Verenkar, has referred to whatever was referred to by P.W.3, Ujwala Verenkar, but in that version, there is no reference of the Applicant/Original Accused having threatened P.W.3, Ujwala Verenkar. It is difficult to accept that the Applicant/Original Accused had threatened P.W.3, Ujwala Verenkar, particularly in view of the fact that in respect of the incident, P.W.3, Ujwala Verenkar, and P.W.4, Vandana Verenkar, have tried to falsely implicate the Applicant/Original Accused in respect of an offence punishable under Sections 506(1) and 376 of the Indian Penal Code. The evidence of P.W.3, Ujwala Verenkar, is not convincing in respect of the offence punishable under Sections 376 and 506(1) of the Indian Penal Code. Therefore, according to me, both the Courts were in error in placing reliance on the solitary evidence that the Applicant/Original Accused had threatened her in case she disclosed the offence to anyone. Therefore, according to me, there is absolutely no evidence in respect of the offence punishable under Section 506(1) of the Indian Penal Code.

18. Mr. S. D. Lotlikar, learned Senior Counsel appearing on behalf of the Applicant/Original Accused did not seriously challenge the evidence in respect of the offence punishable under Section 324 of the Indian Penal

Code. The evidence of P.W.12, Dr. Silvano D. Sapeco, clearly indicates that P.W.3, Ujwala Verenkar, had sustained injuries which were as a result of tooth bite. At the same time, the Applicant/Original Accused has also stated to have received three injuries which were also as a result of tooth bite. Mr. Lotlikar, learned Senior Counsel appearing on behalf of the Applicant/Original Accused urged before me that the defence of the Accused is probablised by the existence of these injuries. According to him, these injuries had been received by P.W.3, Ujwala Verenkar, in the scuffle which resulted on account of P.W.3, Ujwala Verenkar, teasing the Accused. However, both the Courts below have negatived the defence of the Accused. According to me, therefore, no grounds are made out for interference in respect of the conviction of the Applicant/Original Accused for an offence punishable under Section 354 of the Indian Penal Code.

19. Mr. S. D. Lotlikar, learned Senior Counsel appearing on behalf of the Applicant/Original Accused has today placed on record an Affidavit of the Applicant/Original Accused in which the Applicant/Original Accused states that he is the only earning member of his family and is required to support his father who is aged about 75 years and his mother who is aged 65 years. The

Affidavit states that the Applicant/Original Accused is working as a labourer on daily wages. He also states that his marriage is likely to be solemnised in May, 2003. From the record, it appears that the Applicant/Original Accused has been in custody for 11 days as an undertrial prisoner. According to me, the ends of justice would be met by imposing a sentence of the period of imprisonment already undergone by the Applicant/Original Accused and by imposition of a sentence of fine.

20. Accordingly, Criminal Revision Application No.22 of 2002 is partly allowed. The conviction and sentence of the Applicant/Original Accused for an offence punishable under Sections 354 and 506(1) of the Indian Penal Code is hereby quashed and set aside and the Applicant/Original Accused is acquitted of the aforesaid charges. The conviction of the Applicant/Original Accused for an offence punishable under Section 324 of the Indian Penal Code is maintained. However, his sentence of six months Rigorous Imprisonment is set aside and instead he is sentenced to suffer imprisonment for the period already undergone and to pay fine of Rs.2000/-, in default Simple Imprisonment for fifteen days. From the amount of fine, an amount of Rs.1,500/- be paid to P.W.3, Ujwala Verenkar, as compensation under Section 357 of Criminal Procedure Code. The Bail Bonds of the Applicant/Original Accused

shall stand cancelled.

21. Revision is thus partly allowed.

P. V. HARDAS, J.

RD.